IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1231 of 2007

N. Ravishankar .. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-9.

2. The District Magistrate and
District Collector
Vellore District, Vellore-9. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus calling for the records relating to the detention order passed by the second respondent pertaining to the order made in C.3.D.O.No.71/2007 dated 17.08.2007 in detaining the detenu under 2-b of Tamil Nadu Act 14 of 1982, as a Bootlegger and quash the same and direct the respondents to produce the detenu Ramesh, son of Subiramani, aged about 36 years, who is detained at Central Prison, Vellore, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.O.S.Thilak Pasumbadiyar

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu viz., Ramesh, friend of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities

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of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the petitioner has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records relating to the detention order under Tamil Nadu Act 14 of 1982 made in Ref.No.C.3.D.O.No.71/2007, dated 17.8.2007 on the file of the second respondent herein, to quash the same and to consequently direct the respondents to produce him, now confined in Central Prison, Vellore, before this Court and to set him at liberty.

3.1. The order of detention dated 17.8.2007 was passed on the basis of ground case in Crime No.460 of 2007 for alleged commission of offence under Sections 4(1)(i), 4(1)aaa and 4(1)(A) of the Tamil Nadu Prohibition Act. The allegation against the detenu was that on 22.7.2007 when the Sub Inspector of Police, Prohibition Enforcement Wing, Ranipet, along with his police party proceeded on prohibition raids at Pudukulam village, they noticed the detenu selling arrack and on noticing the police party, he tried to escape, but was chased and surrounded by the police party. The police party seized 250 litres of country arrack from five lorry tubes each containing 50 litres. The samples were sent for chemical analysis and it was found that the arrack contained 6.6% mg atropine per 100 ml.

3.2. Apart from the above, the detaining authority also took note of six adverse cases pending against the detenu in Crime Nos.477/2006, 847/2006,880/2006, 682/2006, 111/2007 and 424/2007 registered on the file of Prohibition Enforcement Wing, Ranipet for the offences of alike nature.

3.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

4. Heard both sides. We have perused the materials produced before us.

5. The learned counsel for the petitioner challenges the order of detention on the ground of non-application of mind on the part of the detaining authority to the fact that while the detenu was arrested on 22.7.2007 at 09.00 hours and the First Information Report was registered only at 12.45 hours, in the arrest report the Crime No.460 of 2007 is stated.

6. From the materials available on record, as contended by the learned counsel for the petitioner, it is evident that the

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detenu was arrested on 22.7.2007 at 9.00 hours and the First Information Report was registered at 12.45 hours, but in the arrest report the Crime No.460 of 2007 is stated. There is no explanation on the part of the detaining authority as to how the crime number came to be mentioned in the arrest report, which was three hours and forty five minutes earlier than the lodging of the F.I.R. The police have not filed any affidavit as to how they got the crime number, viz., by using wireless or cellphone to contact the relevant police station to ascertain the crime number. The absence of any such affidavit filed on behalf of the sponsoring authority and the failure of the detaining authority to get an explanation on this aspect vitiates the order of detention.

For the aforesaid reason, the petition is liable to be allowed and hence, the same is allowed. The order of detention dated 17.8.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in any other crime. No costs.

ATR

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Secretary to Government
   Home, Prohibition and Excise Department
   State of Tamilnadu
   Secretariat, Chennai-9.

2. The District Magistrate and
   District Collector
   Vellore District
   Vellore-9.

3. The Superintendent
   Central Prison, Vellore.

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4. The Joint Secretary
to the Government of Tamil Nadu,
Public (Law and Order) Department,
Fort St George, Chennai 9.

5. The Public Prosecutor
High Court, Madras.

• 1 cc to Mr. O. S. Thilakpasumbadiyar, Advocate SR No. 68505

ASM(CO)
SR/10.12.2007

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